IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/10/2003

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THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HONOURABLE MR.JUSTICE S.K.KRISHNAN

W.A.No.2598 of 2001

S.Vijayakumar .. Appellant

-Vs-

1. The Returning Officer,
Semusigapuram Village Panchayat,
Rajapalayam Panchayat Union,
Virudhunagar District.

2. The District Election Officer,
Virudhunagar District,
Virudhunagar.

3. The State Election Commissioner,
Vadapalani, Chennai.

4. S.Muthuramalingam .. Respondents

Writ Appeal under Clause 15 of the Letters Patent against the order of this Court dated 8-11-2001 in W.P.No.21505 of 2001.

!For petitioner : M/s.G.Jeremiah

^For respondents: Mr.P.S.Jayakumar for RR1 to 3
Mr.M.Thirunavukkarasu for R4

:JUDGMENT

(The Judgment of the Court was delivered by R.Jayasimha Babu,J.)
The appellant seeks to take advantage of an error committed by the Returning Officer who had issued a certificate in Form 26 under the Tamil Nadu Panchayats (Elections) Rules to the appellant, even though he was not the person who had polled the largest number of votes and was therefore, not entitled to be regarded as an elected candidate.
2. The certificate was issued on 21-10-2001. On the same day, immediately after realising the error, the impugned order was issued, which sets out in detail the number of votes polled by each one of the candidates.

It shows that the fourth respondent had obtained the highest number of votes and that the appellant had obtained 178 votes, which is 68 votes less than 246 votes that had been obtained by the fourth respondent. The appellant/writ petitioner does not dispute the correctness of those figures. Clearly, the writ petitioner was not entitled to be regarded as elected candidate.

3. Rule 67 of the Tamil Nadu Panchayats (Elections) Rules, 1995 in sub-rule 3(a) provides thus:

"In the case of election of member of Village Panchayats, after Returning Officer has completed the scrutiny and counting of votes, he shall declare elected, its candidate or candidates, as the case may be, to whom the largest number of valid votes have been given and complete and certify the return in Form 24 and send the signed copy to the District Election Officer and the State Election Commission."

(The other parts of that Rule are not set out as they are not necessary).

4. Form 26 is to be issued only to the person to whom the largest number of valid votes had been given. If such a Form is given to a person who has not polled the largest number of valid votes, such a person does not acquire a indefeasible right to be regarded as person elected, solely on the strength of issue of Form 26 under Rule 69.

5. In order to be regarded as the elected candidate, the person should have polled the highest number of votes. Form 24 is to be first prepared in which the number of votes polled by each of the candidates is required to be set out. Form 26 which is to be given to the elected candidate, must be given only to the person who has polled the largest number of votes and whose name is found in Form 24 along with the number of votes polled by him. The error committed by the Returning Officer in giving Form 26 to a person who has polled the highest number of votes, is not a Form on which the recipient can rely, to claim the status of an elected member of the Panchayat.

6. In this case, error was realised on the same day on which the counting was done, the writ petitioner was informed of the error and the details which are required to be set out in Form 24, had been incorporated in the letter that was sent to him on the same day.

7. The submission made by learned counsel for the appellant that even in such cases, the only remedy is by way of election petition under Section 258 of the Tamil Nadu Panchayats Act, cannot, having regard to what has been stated earlier, be accepted. Section 258 of the Act no doubt requires that the election of a member shall not be called into question except by an election petition. Here, what has been done is not the calling into question the election of any member. What has been done is to recall the certificate given to a person who was not entitled to receive the same, having regard to the number of votes polled and who was not entitled to be regarded as the elected member. It is only when having regard to the number of votes polled, a person is declared as the elected member and given the certificate, the provisions of Section 258 are attracted.

8. Recalling of the certificate erroneously given to the writ petitioner who had not received the highest number of votes, was therefore perfectly in accordance with law. We do not find any merit in the writ appeal and the same is dismissed. No costs.

Index: Yes.

Internet: Yes.

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To

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